

**MARCH 10, 2008**

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JAB PRODUCE, INC.  
2404 S. Wolcott Avenue, Suite 23  
Chicago, Illinois 60608  
(312) 226-7805

Plaintiff

v.

Civil Action No.

**08 C 1429**

**JUDGE LEFKOW  
MAGISTRATE JUDGE COX**

SPECIALS, INC.  
4335 W. 31<sup>st</sup> Street  
Chicago, Illinois 60623  
(773) 376-6444

CHESTER JANKOWSKI  
1010 Coronet  
La Grange, Illinois 60525  
(773) 376-6444

MARK CURIN  
8413 Heather Court  
Burr Ridge, Illinois 60521  
(773) 376-6444

THOMAS DECANIO  
20650 Exeter Road  
Kildeer, Illinois 60047  
(847) 726-0000

and

MICHAEL SMIT  
13700 S. 84<sup>th</sup> Avenue  
Orland Park, Illinois 60462  
(708) 460-2323

Defendants.

**COMPLAINT  
(To Enforce Payment From Produce Trust)**

JAB Produce, Inc. ("JAB"), for its complaint against defendants, Specials, Inc., Chester Jankowski, Mark Curin, Thomas DeCanio, and Michael Smit, alleges:

### JURISDICTION AND VENUE

1. Subject matter jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(5) (hereafter "the PACA"), 28 U.S.C. §1331 and 28 U.S.C. §2201.

2. Venue in this District is based on 28 U.S.C. §1391 in that (a) plaintiff's claims arose in this District and (b) defendants reside in this District.

### PARTIES

3. Plaintiff, JAB, an Illinois corporation with its principal place of business in Chicago, Illinois, is engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate commerce and was at all times pertinent herein, a dealer subject to and licensed under the provisions of the PACA as a dealer.

4. a. Defendant, Specials, Inc. ("Specials"), an Illinois corporation with a principal place of business in Chicago, Illinois, is also engaged in the business of buying and selling wholesale quantities of produce in interstate commerce and was at all times pertinent herein, a dealer licensed under the provisions of the PACA as a dealer.

b. Defendant, Chester Jankowski, upon information and belief, is an owner, officer, and director of Specials, during the period of time in question who controlled the day to day operations of Specials and was in a position of control over the PACA trust assets belonging to plaintiff.

b. Defendant, Mark Curin, upon information and belief, is an owner, officer, and director of Specials, during the period of time in question who controlled the day to day operations of Specials and was in a position of control over the PACA trust assets belonging to plaintiff.

c. Defendant, Thomas DeCanio, upon information and belief, is an owner, officer, and director of Specials, during the period of time in question who controlled the day to day operations of Specials and was in a position of control over the PACA trust assets belonging to plaintiff.

d. Defendant, Michael Smit, upon information and belief, is an owner, officer, and director of Specials, during the period of time in question who controlled the day to day operations of Specials and was in a position of control over the PACA trust assets belonging to plaintiff.

#### GENERAL ALLEGATIONS

5. This action is brought to obtain declaratory relief and to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. § 499e(c).

6. Between July, 2002 and March, 2008, plaintiff JAB sold and delivered to defendant Specials, in interstate commerce, \$39,791.00 worth of wholesale quantities of produce of which \$39,791.00 remains unpaid. An itemized statement of account is attached hereto as Exhibit 1.

7. Defendants accepted the produce from plaintiff.

8. At the time of receipt of the produce, plaintiff became a beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust consists of all produce or produce-related assets, including all funds commingled

with funds from other sources and all assets procured by such funds, in the possession or control of defendants since the creation of the trust.

9. Plaintiff preserved its interest in the PACA trust in the amount of \$39,791.00 and remains a beneficiary until full payment is made for the produce. A sampling of Plaintiff's invoices, which are voluminous, with the trust language required by 7 U.S.C. 499e(c)(4) to preserve trust benefits, is attached hereto as Exhibit 2. All of Plaintiff's invoices contain the requisite statutory language to preserve trust benefits.

10. Despite demand for payment, Defendants have failed and refuse to pay plaintiff for the wholesale quantities of produce supplied by plaintiff, and have advised plaintiff they are unable to do so.

11. The failure, refusal, and admitted inability to make payment to plaintiff indicates that Specials is failing to maintain sufficient assets in the statutory trust to pay plaintiff and is dissipating trust assets.

Count 1

(Failure to Pay Trust Funds)

12. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 11 above as if fully set forth herein.

13. The failure of defendant Specials to make payment to plaintiff of trust funds in the aggregate amount of \$39,791.00 from the statutory trust is a violation of PACA and PACA regulations, and is unlawful.

WHEREFORE, plaintiff requests an order enforcing payment from the trust by requiring immediate payment to plaintiff from defendant Specials in the amount

of \$39,791.00, and such other and further relief as the Court deems necessary and appropriate.

Count 2

(Failure to Pay For Goods Sold)

14. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 13 above as if fully set forth herein.

15. Defendant Specials failed and refused to pay plaintiff the amount of \$39,791.00 owed to plaintiff for produce received by defendant from plaintiff.

WHEREFORE, plaintiff requests judgment in favor of JAB, and against defendant Specials, in the amount of \$39,791.00, and for such other and further relief as the Court deems necessary and appropriate.

Count 3

(Unlawful Dissipation of Trust Assets by  
a Corporate Official – Chester Jankowski)

16. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 15 above as if fully set forth herein.

17. Defendant, Chester Jankowski, is an owner, officer and director of Specials who operated Specials during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

18. Defendant, Chester Jankowski, failed to direct Specials to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

19. Defendant, Chester Jankowski's failure to direct Specials to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

20. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Chester Jankowski, in favor of plaintiff, JAB, in the amount of \$39,791.00, plus such other and further relief as the Court deems necessary and appropriate.

Count 4

(Unlawful Dissipation of Trust Assets by  
a Corporate Official – Mark Curin)

21. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 20 above as if fully set forth herein.

22. Defendant, Mark Curin, is an owner, officer and director of Specials who operated Specials during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

23. Defendant, Mark Curin, failed to direct Specials to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

24. Defendant, Mark Curin's failure to direct Specials to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

25. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Mark Curin, in favor of plaintiff, JAB, in the amount of \$39,791.00, plus such other and further relief as the Court deems necessary and appropriate.

Count 5

(Unlawful Dissipation of Trust Assets by  
a Corporate Official – Thomas DeCanio)

26. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 25 above as if fully set forth herein.

27. Defendant, Thomas DeCanio, is an owner, officer and director of Specials who operated Specials during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

28. Defendant, Thomas DeCanio, failed to direct Specials to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

29. Defendant, Thomas DeCanio's failure to direct Specials to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

30. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Thomas

DeCanio, in favor of plaintiff, JAB, in the amount of \$39,791.00, plus such other and further relief as the Court deems necessary and appropriate.

Count 6

(Unlawful Dissipation of Trust Assets by  
a Corporate Official – Michael Smit)

31. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 30 above as if fully set forth herein.

32. Defendant, Michael Smit, upon information and belief, is an owner, officer and director of Specials who operated Specials during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

33. Defendant, Michael Smit, failed to direct Specials to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

34. Defendant, Michael Smit's failure to direct Specials to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

35. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Michael Smit, in favor of plaintiff, JAB, in the amount of \$39,791.00, plus such other and further relief as the Court deems necessary and appropriate.



Count 7

(Interest and Attorneys Fees)

36. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 35 above as if fully set forth herein.

37. As a result of defendants' failure to make full payment promptly of the amount of \$39,791.00, plaintiff has lost the use of said money.

38. As a further result of defendants' failure to make full payment promptly of \$39,791.00, plaintiff has been required to pay attorney's fees and costs in order to bring this action to require defendants to comply with their statutory duties.

39. PACA and the invoices of plaintiff JAB entitle plaintiff JAB to recover prejudgment interest at a rate of 1.5% per month and attorney's fees incurred to collect any balance due from defendants.

WHEREFORE, plaintiff requests judgment against each of the defendants, jointly and severally, for prejudgment interest, costs and attorneys fees.

Dated this 10th day of March, 2008.

McCARRON & DIESS

LAW OFFICES OF WILLIAM B. KOHN

By: s/Mary Jean Fassett

Mary Jean Fassett, ID#9078552  
4900 Massachusetts Ave., N.W.  
Suite 310  
Washington, DC 20016  
(202) 364-0400  
(202) 364-2731 – fax  
[mjf@mccarronlaw.com](mailto:mjf@mccarronlaw.com)

By: s/William B. Kohn

William B. Kohn  
150 N. Wacker Drive  
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Chicago, Illinois 60606  
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(312) 553-1733 – fax  
[kohn@wbkohnlaw.com](mailto:kohn@wbkohnlaw.com)

Attorneys for Plaintiff

EXHIBIT "1"

03/07/08

JAB Produce, Inc.  
Accounts Receivable Detail

Page: 1

Customer: S4005, SPECIALS

Phone# (773)376-6444

Date	Ticket #	Code	Amount	Paid	Credit	Balance
07/25/02	642745	DI	72.00	0.00	0.00	72.00
05/31/06	531094	DI	910.00	784.00	154.00	-28.00
01/08/07	578841	DI	418.75	418.00	0.00	0.75
07/10/07	617482	DI	12.00	0.00	0.00	12.00
01/05/08	655261	DI	38.00	0.00	0.00	38.00
01/07/08	655361	DI	120.00	0.00	0.00	120.00
01/07/08	655644	DI	880.00	0.00	0.00	880.00
01/08/08	655745	DI	139.00	0.00	0.00	139.00
01/11/08	656477	DI	218.00	0.00	0.00	218.00
01/11/08	656487	DI	714.00	0.00	0.00	714.00
01/14/08	657001	DI	309.00	0.00	0.00	309.00
01/14/08	657009	DI	819.50	0.00	0.00	819.50
01/15/08	657218	DI	194.75	0.00	0.00	194.75
01/16/08	657492	DI	169.50	0.00	0.00	169.50
01/16/08	657567	DI	555.00	0.00	0.00	555.00
01/16/08	657568	DI	333.50	0.00	0.00	333.50
01/17/08	657716	DI	746.00	0.00	0.00	746.00
01/17/08	657847	DI	447.00	0.00	0.00	447.00
01/17/08	657848	DI	755.00	0.00	0.00	755.00
01/17/08	657850	DI	36.00	0.00	0.00	36.00
01/18/08	657849	DI	274.00	0.00	0.00	274.00
01/18/08	658064	DI	150.00	0.00	0.00	150.00
01/18/08	658115	DI	125.00	0.00	0.00	125.00
01/18/08	658266	DI	1386.00	0.00	0.00	1386.00
01/18/08	658300	DI	1051.00	0.00	0.00	1051.00
01/19/08	658349	DI	444.50	0.00	0.00	444.50
01/21/08	658455	DI	91.00	0.00	0.00	91.00
01/21/08	658630	DI	920.00	0.00	0.00	920.00
01/21/08	658638	DI	638.00	0.00	0.00	638.00
01/23/08	659022	DI	170.00	0.00	0.00	170.00
01/24/08	659221	DI	160.50	0.00	0.00	160.50
01/24/08	659227	DI	65.00	0.00	0.00	65.00
01/24/08	659260	DI	400.00	0.00	0.00	400.00
01/24/08	659377	DI	610.00	0.00	0.00	610.00
01/24/08	659379	DI	27.00	0.00	0.00	27.00
01/25/08	659473	DI	430.50	0.00	0.00	430.50
01/25/08	659475	DI	724.50	0.00	0.00	724.50
01/25/08	659684	DI	1089.00	0.00	0.00	1089.00
01/28/08	660072	DI	1371.00	0.00	0.00	1371.00
01/28/08	660108	DI	196.00	0.00	0.00	196.00
01/30/08	660536	DI	710.00	0.00	0.00	710.00
01/30/08	660537	DI	601.50	0.00	0.00	601.50
02/01/08	660989	DI	30.00	0.00	0.00	30.00
02/01/08	661132	DI	443.00	0.00	0.00	443.00
02/01/08	661133	DI	400.00	0.00	0.00	400.00
02/02/08	661136	DI	453.00	0.00	0.00	453.00
02/04/08	661557	DI	568.00	0.00	0.00	568.00
02/04/08	661591	DI	782.50	0.00	0.00	782.50
02/06/08	661989	DI	137.50	0.00	0.00	137.50
02/06/08	662078	DI	669.50	0.00	0.00	669.50
02/06/08	662082	DI	624.25	0.00	0.00	624.25
02/07/08	662305	DI	333.50	0.00	0.00	333.50
02/07/08	662334	DI	260.00	0.00	0.00	260.00

03/07/08

JAB Produce, Inc.  
Accounts Receivable Detail

Page: 2

Customer: S4005, SPECIALS

Phone# (773)376-6444

Date	Ticket #	Code	Amount	Paid	Credit	Balance
02/08/08	662493	DI	72.00	0.00	0.00	72.00
02/08/08	662495	DI	103.75	0.00	0.00	103.75
02/08/08	662623	DI	188.00	0.00	0.00	188.00
02/08/08	662634	DI	320.00	0.00	0.00	320.00
02/08/08	662636	DI	253.50	0.00	0.00	253.50
02/11/08	662905	DI	206.50	0.00	0.00	206.50
02/11/08	662913	DI	229.00	0.00	0.00	229.00
02/11/08	663057	DI	761.00	0.00	0.00	761.00
02/13/08	663473	DI	530.00	0.00	0.00	530.00
02/13/08	663555	DI	950.50	0.00	0.00	950.50
02/14/08	663670	DI	328.00	0.00	0.00	328.00
02/15/08	663954	DI	200.00	0.00	0.00	200.00
02/15/08	664147	DI	628.00	0.00	0.00	628.00
02/18/08	664396	DI	909.75	0.00	0.00	909.75
02/18/08	664561	DI	801.00	0.00	0.00	801.00
02/18/08	664576	DI	717.00	0.00	0.00	717.00
02/19/08	664711	DI	432.50	0.00	0.00	432.50
02/20/08	665027	DI	1032.75	0.00	0.00	1032.75
02/21/08	665112	DI	191.00	0.00	0.00	191.00
02/22/08	665406	DI	396.50	0.00	0.00	396.50
02/22/08	665452	DI	300.00	0.00	0.00	300.00
02/22/08	665577	DI	27.00	0.00	0.00	27.00
02/22/08	665581	DI	1037.50	0.00	0.00	1037.50
02/22/08	665604	DI	578.50	0.00	0.00	578.50
02/25/08	665811	DI	210.00	0.00	0.00	210.00
02/25/08	665996	DI	931.50	0.00	0.00	931.50
02/26/08	666111	DI	24.00	0.00	0.00	24.00
02/27/08	666405	DI	630.00	0.00	0.00	630.00
02/28/08	666625	DI	158.00	0.00	0.00	158.00
02/28/08	666643	DI	395.50	0.00	0.00	395.50
02/29/08	666825	DI	266.50	0.00	0.00	266.50
02/29/08	666853	DI	18.50	0.00	0.00	18.50
02/29/08	666977	DI	370.00	0.00	0.00	370.00
02/29/08	666979	DI	1288.00	0.00	0.00	1288.00
03/03/08	667273	DI	125.00	0.00	0.00	125.00
03/04/08	667574	DI	447.50	0.00	0.00	447.50
03/05/08	667808	DI	261.00	0.00	0.00	261.00
03/05/08	667936	DI	236.00	0.00	0.00	236.00
03/06/08	668010	DI	174.00	0.00	0.00	174.00
Current	7 Days	14 Days	21 Days	Over 35	Total	
1243.50	4292.00	6423.50	8793.50	19038.50	39791.00	

EXHIBIT "2"

**JAB PRODUCE, INC.****"Top Quality Wholesale Produce"**

2404 South Wolcott, Unit 23 Chicago, Illinois 60608

Phone (312) 226-7805 (312) 226-5154

**JAB PRODUCE, INC.**

03/07/08 (09:42:41) #2

Invoice: 655644 01/07/08  
 Customer: SPECIALS  
 Ship to: deliver

Invoice: 655644 01/07/08  
 Customer: SPECIALS  
 Ship to: deliver

**CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY**

\*\*\*\*\* Duplicate Invoice \*\*\*\*\*

\*\*\*\*\* Duplicate Invoice \*\*\*\*\*

40 CS Lettuce-Palletized Liner  
 Nature's Reward Liner @18.00 = 720.00  
 10 CS Tomatoes, Grape  
 @16.00 = 160.00

40 CS Lettuce-Palletized Liner  
 Nature's Reward Liner 15949 : ct  
 10 CS Tomatoes, Grape 15929 : cr

880.00

Mike

**FOR RESALE ONLY**

Payment terms are 10 days.  
**PACA TRUST PROVISION:** The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of collection, including court costs and attorney's fees.

**TOTAL****WRITTEN BY****DELIVERED BY**